

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

THE UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

BLUE TEE CORP.,)

Defendant.)

CIVIL ACTION NO.:

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action for injunctive relief and recovery of costs under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. The United States seeks to recover the unreimbursed costs it has incurred in connection with releases and threatened releases of hazardous substances at and from

the Granby Subdistrict of the Newton County Mine Tailings Superfund Site in Newton County, Missouri ("Granby Subdistrict").

2. In this action the United States also seeks an order requiring Defendant Blue Tee Corp. ("Blue Tee") to perform a non-time-critical removal action for the Granby Subdistrict.

JURISDICTION AND VENUE

3. The Court has jurisdiction over the subject matter of this action, and the defendant, pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613.

4. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial District.

DEFENDANT

5. Defendant Blue Tee is a Maine corporation.

6. Blue Tee is a "person," within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

STATUTORY FRAMEWORK

7. CERCLA provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of, such hazardous substance. 42 U.S.C. § 9604(a).

8. CERCLA, 42 U.S.C. § 9607(a), provides:

(1) the owner or operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

... shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the national contingency plan. ...

9. CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides, in pertinent part, that:

In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover response costs or damages.

10. CERCLA, 42 U.S.C. § 9606, provides that:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

11. By Executive Order 12580 of January 23, 1987, the President's functions under 42 U.S.C. § 9606(a) have been delegated to the Administrator of the EPA.

GENERAL ALLEGATIONS

12. The Granby Subdistrict is one of six subdistricts which make up the Newton County Mine Tailings Superfund Site, located in southwest Missouri. The Newton County Mine Tailings Superfund Site was listed on EPA's National Priorities List on September 29, 2003 due to contamination of groundwater and soil by lead, cadmium and zinc, as the result of extensive on-site historic mining activities.

13. Defendant Blue Tee is the successor corporation to the American Zinc, Lead and Smelting Company ("AZLS"), which conducted mining activities within the Granby Subdistrict from approximately 1916 through 1935.

14. Mining-related contaminants, including lead, cadmium and zinc, were released onto and from mining properties within the Granby Subdistrict while these properties were owned and/or operated by Blue Tee and/or its predecessors.

15. Several residential water-supply wells within or around the Granby Subdistrict are contaminated by mining-related metals, including lead, cadmium and/or zinc, in concentrations that exceed health-based limits.

16. The United States has undertaken, and continues to undertake removal and other response actions at the Granby Subdistrict in response to releases or threatened releases of hazardous substances at and from the Granby Subdistrict.

17. EPA approved this response action, for a non-time-critical drinking water removal, in an August 2003 Engineering Evaluation/Cost Analysis and selected the response action in a November 2006 Action Memorandum.

18. As of October 14, 2006, the United States has incurred response costs for the Granby Subdistrict totaling at least \$1,288,645.11.

19. EPA's costs of response actions are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF
(Claim for Recovery of Response Costs)

20. The allegations of the foregoing paragraphs are incorporated herein by reference.

21. Mining-related contaminants, lead, cadmium and zinc, are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. There were and are “releases” as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), as well as the threat of continuing releases of hazardous substances, including lead, cadmium and zinc, into the environment at and from the Granby Subdistrict.

23. The Granby Subdistrict is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. Defendant Blue Tee owned and/or operated properties and/or mining operations within the Granby Subdistrict at the time of disposal of hazardous substances at and from the Granby Subdistrict, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

25. The releases or threatened releases of hazardous substances at and from the Granby Subdistrict have caused the United States to incur response costs, within the meaning of Sections 101(25) and 107 of CERCLA, 42 U.S.C. §§ 9601(25) and 9607, in connection with the Granby Subdistrict.

26. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Blue Tee is liable to the United States for the response costs incurred by the United States in connection with releases or threatened releases of hazardous substances at and from the Granby Subdistrict.

27. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), Blue Tee is liable for “a declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recover further response costs.”

SECOND CLAIM FOR RELIEF
(Claim for Injunctive Relief)

28. The allegations of the foregoing paragraphs are incorporated herein by reference.

29. There is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances in and from the Granby Subdistrict.

30. Blue Tee is liable under Section 106 of CERCLA, 42 U.S.C. § 9606, to take such actions as EPA determines are necessary to protect public health and welfare, and the environment, at the Granby Subdistrict or where contaminants from the Granby Subdistrict have come to be located.

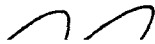
PRAYER FOR RELIEF

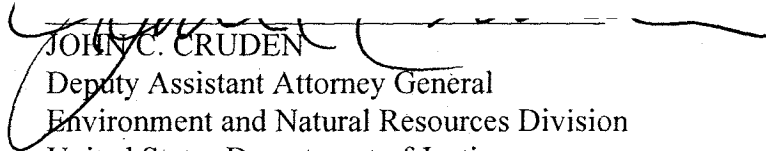
WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Award the United States a judgment against Blue Tee for all costs incurred and to be incurred by the United States in response to releases or threatened releases of hazardous substances at and from the Granby Subdistrict, including the costs of this action.
2. Enter an order requiring Blue Tee to perform work necessary for the non-time-critical removal action for the Granby Subdistrict.

3. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), enter "a declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recover further response costs."

4. Grant such other and further relief as is appropriate.

Respectfully submitted, 


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